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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/784,045

Filing Date: February 16, 2001

Appellant(s): KIRSH ET AL.

James M. Denaro
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/13/07 appealing from the Office action mailed 11/3/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

NEW GROUND(S) OF REJECTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

(A) Claims 1-2 and 4-23 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter. Based on Supreme Court precedent¹[1] and recent Federal Circuit decisions, § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing.²[2] If neither of these requirements is met by the claim(s), the method is not a patent eligible process under 35 U.S.C. § 101. However, claims 1-2 and 4-23 does not seem to fall within one of the recognized categories. The method as claimed can be performed in the mind of a user, by paper and pencil, or by a machine. These steps constitute the idea of appeal processing. One may not patent a process that comprises every "substantial practical application" of an abstract idea, because such a patent in practical effect, would be a patent of the [abstract idea] itself." *Benson*, 409 U.S. at 71-72, 175 USPQ at 676; *cf. Diehr*, 450 U.S. at 187, 209 USPQ at 8.

The above deficiency can be overcome by expressly stating in the body of the claimed method, using a computer (apparatus) or terminal, for example, which makes the claim useful.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,330,551	BURCHETTA et al.	12-2001
6,766,307	ISRAEL et al.	7-2004
4,858,121	BARBER et al.	8-1989

¹[1] *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

²[2] The Supreme Court recognized that this test is not necessarily fixed or permanent and may evolve with technological advances. *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972).

PR Newswire, "Cardiff Software Announce TELEform MediClaim Module" (May 1, 1998); pg.

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(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

(A) Claims 1-2 and 4-23 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent³[1] and recent Federal Circuit decisions, § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing.⁴[2] If neither of these requirements is met by the claim(s), the method is not a patent eligible process under 35 U.S.C. § 101. However, claims 1-2 and 4-23 does not seem to fall within one of the recognized categories. The method as claimed can be performed in the mind of a user, by paper and pencil, or by a machine. These steps constitute the idea of appeal processing. One may not patent a process that comprises every "substantial practical application" of an abstract idea, because such a patent in practical effect, would be a patent of the [abstract idea] itself." *Benson*, 409 U.S. at 71-72, 175 USPQ at 676; *cf. Diehr*, 450 U.S. at 187, 209 USPQ at 8.

³[1] *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

⁴[2] The Supreme Court recognized that this test is not necessarily fixed or permanent and may evolve with technological advances. *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972).

The above deficiency can be overcome by expressly stating in the body of the claimed method, using a computer (apparatus) or terminal, for example, which makes the claim useful.

Specification

2. The amendment filed 8/21/06 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

The newly added recitation of “extracting at least one reason from appeals data relating to as approved appeal” and “comparing the appeal data relating to a denied appeal to the at least one reason relating to an approved appeal stored in the appeal database” within claim 22 and “automatically identifying a regulatory agency appropriate for an appeal, the identification being based upon the identified state and the type of health care insurance in the received appeal data” within claim 23 appears to constitute new matter. In particular, Applicant does not point to, nor was the Examiner able to find, any support for the comparing of appeal data or automatically identifying a regulatory agency within the specification as originally filed. As such, Applicant is respectfully requested to clarify the above issues and to specifically point out support for the newly added limitations in the originally filed specification and claims.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. The specification is objected to under 35 U.S.C. § 112, first paragraph, because the specification, as originally filed, does not provide support for the invention as is now claimed for the reasons given in section 2 above.

5. Claims 22 and 23 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention and for the reasons set forth in the objection to the specification above.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 3, 4, 6-8, and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,330,551 to Burchetta et al.

As per claim 1, Burchetta et al. teaches a method for an automated appeal process for a provider, comprising:

--the claimed receiving provider identification from a remote provider station is met by the system that allows a user to communicate using a standard PC computer and modem via the Internet and a user security code corresponding to the dispute and identifying the user, i.e. the person or representative thereof who is making the demand or offer (see: column 2, lines 41-54);

--the claimed receiving appeal data from the remote station, wherein the appeal data comprises data descriptive of a plurality of insurance appeals is met by receiving a plurality of demands and settlement offers from the involved parties via the Internet (see: column 19, lines 32-35). In addition, Burchetta et al. teaches that a defendant, or his or her insurer make a series of offers to settle a claim (see: column 1, lines 39-49). The Examiner considers the series of demands and offers as data descriptive of a plurality of insurance appeals;

--the claimed storing the appeal data from the remote station is met by memory means (9, Fig. 1) stores the identification of the dispute and the persons involved in the dispute (see: column 4, lines 3-5);

--the claimed sending the appeal data to an appeals unit is met by the central processing unit that receives information corresponding to three settlement offers and a plaintiff or claimant enters three demands in a plurality of communication with the system (see: column 2, lines 3-6);

--the claimed receiving appeal status information for a plurality of appeals from the appeals unit is met by the communication and processing of all demands and offers through the central processing unit (8, Fig. 1) (see: column 3, lines 64 to column 2, lines 5). In addition, Burchetta et al. teaches a computer screen displaying current status of case with corresponding details to attorney (see: column 15, lines 23-31).

Burchetta et al. teaches computer screen displaying current status of case with corresponding details to attorney (see: column 15, lines 23-31).

Burchetta et al. fails to explicitly teach an appeal is a request for reconsideration of a claim adjudicated by an insurer.

However, Burchetta et al. teaches a computerized system for automated dispute resolution through the Intranet or Internet where a dispute is a claim against another person or against whom another person has asserted a claim, whether the litigation is pending or not (see: column 4, lines 23-27). In addition, Burchetta et al. teaches that a defendant, or his or her insurer make a series of offers to settle a claim (see: column 1, lines 39-49). The Examiner considers a dispute that is not pending as a claim that has been adjudicated by the one of the parties involved such as the insurer. Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include an appeal that is a request for reconsideration of a claim adjudicated by an insurer with the computerized dispute resolution system and method as taught by Burchetta et al. with the motivation of providing accurate appeal information thereby allowing the opportunity for involved parties to successfully settle their claims easily, effectively and inexpensively.

As per claim 3, Burchetta et al. teaches a system for an automated appeal process for a user, comprising:

--the claimed server connected to a remote station for receiving appeal data from the remote station is met by the system which is preferably through ColdFusion Server extension which allows for interactive processing and Microsoft's SQLserver to allow attorneys and claims adjuster to access it via a standard web browser (see: column 9, lines 58-65);

--the claimed database for storing the appeal data is met by the information that is entered is submitted to a central database via the Internet (see: column 9, lines 65-66);
wherein the server is further configured or arranged to:

--the claimed transmit an appeal form to the user at the remote station is met when a user logs-in and agrees to participate in the dispute resolution at step 11, the system send the user to the original menu choice. The Examiner considers the original menu screen to include forms such as demand and offer forms depending on the user;

--the claimed received an appeal form containing appeal data from the user is met by receiving a plurality of demands and settlement offers from the involved parties via the Internet (see: column 19, lines 32-35);

--the claimed process the appeal form to generate an appeal having a predetermined format is met by each claim being submitted electronically is formmatted to be compatible with the system for example a PC input fed to the central processing unit (see: column 9, lines 28-32);

--the claimed sending the formatted appeal to an appeal unit is met by each claim is submitted electronically is a format compatible with the system for example a PC input fed to the central processing unit (see: column 9, lines 28-32); and

--the claimed sending a status report to the user at remote station is met by the computer screen displaying current status of case with corresponding details to attorney (see: column 15, lines 23-31).

Burchetta et al. fails to explicitly teach an appeal is a request for reconsideration of a claim adjudicated by an insurer.

However, Burchetta et al. teaches a computerized system for automated dispute resolution through the Intranet or Internet where a dispute is a claim against another person or against whom another person has asserted a claim, whether the litigation is pending or not (see: column 4, lines 23-27). In addition, Burchetta et al. teaches that a defendant, or his or her insurer

make a series of offers to settle a claim (see: column 1, lines 39-49). The Examiner considers a dispute that is not pending as a claim that has been adjudicated by the one of the parties involved such as the insurer. Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include an appeal that is a request for reconsideration of a claim adjudicated by an insurer with the computerized dispute resolution system and method as taught by Burchetta et al. with the motivation of providing accurate appeal information thereby allowing the opportunity for involved parties to successfully settle their claims easily, effectively and inexpensively.

As per claim 4, Burchetta et al. teaches a method of automating an appeal process, comprising:

--the claimed electronically collecting the user information from a user and storing the user information is met receiving a plurality of demands from a first party for a claim (see: column 19, lines 32-33);

--the claimed presenting the user with a claim denial form is met by the system communicating to each party the results of the comparison of the demands and offers and results i.e. no settlement or settled at a certain amount (reads on “denial information”) (see: column 9, lines 50-52);

--the claimed collecting claim denial information and storing the claim denial information is met by the system communicating to each party the results of the comparison of the demands and offers and results i.e. no settlement or settled at a certain amount (reads on “denial information”) (see: column 9, lines 50-52). In addition, Burchetta et al. teaches that all information entered is submitted to central database via the Internet (see: column 9, lines 66-67);

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--the claimed presenting the user with a patient information form is met by user information screen that allow the user to add/edit information into the database such as sponsor name (patient's insurance company) (see: column 13, lines 43-65);

--the claimed collecting patient information and storing the patient information is met by user information screen that allow the user to add/edit information into the database such as sponsor name (patient's insurance company) (see: column 13, lines 43-65);

--the claimed presenting the user with a provider information form is met by the sponsor information screen that allow the sponsor to add/edit information stored in the database such as sponsor name, address, etc...(see: column 13, line 21-38);

--the claimed collecting provider information and storing the provider information is met by the sponsor information screen that allow the sponsor to add/edit information stored in the database such as sponsor name, address, etc...(see: column 13, line 21-38);

--the claimed collecting appeal status information on an adjudicated claim and storing the appeal status information is met by the case information screen that allows the claimant attorney to view information from the database such as current status of case with corresponding details (see: column 14, lines 64 to column 15, lines 31);

--the claimed presenting the user with a check appeal status form is met by the case information screen that allows the claimant attorney to view information from the database such as current status of case with corresponding details (see: column 14, lines 64 to column 15, lines 31); and

--the claimed collecting check appeal status information and presenting the user with appeal status information based on the check appeal status information collected is met by the

case information screen that allows the claimant attorney to view information from the database such as current status of case with corresponding details (see: column 14, lines 64 to column 15, lines 31).

Burchetta et al. fails to explicitly teach:

--the claimed electronically collecting the user information from a user and storing the user information; and
--the claimed appeal status information relates to request for reconsideration of a claim adjudicated by an insurer.

However, Burchetta et al. teaches a computerized system for automated dispute resolution through the Intranet or Internet where a dispute is a claim against another person or against whom another person has asserted a claim, whether the litigation is pending or not (see: column 4, lines 23-27). In addition, Burchetta et al. teaches that a defendant, or his or her insurer make a series of offers to settle a claim (see: column 1, lines 39-49). The Examiner considers a dispute that is not pending as a claim that has been adjudicated by the one of the parties involved such as the insurer. Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include an appeal that is a request for reconsideration of a claim adjudicated by an insurer with the computerized dispute resolution system and method as taught by Burchetta et al. with the motivation of providing accurate appeal information thereby allowing the opportunity for involved parties to successfully settle their claims easily, effectively and inexpensively.

As per claim 6, Burchetta et al. teaches the claimed presenting an administrative interface including information on an appeal submitted. This limitation is met by the system designed to

allow a user to communicate with the system through a standard PC computer and modem via the Internet (see: column 2, lines 41-43). In addition, Burchetta et al. teaches an option of the system administrator to Add/Edit information from the database such as case status information (see: column 16, lines 65 to column 17, lines 50).

As per claim 7, Burchetta et al. teaches a method for an automated appeal process, comprising:

--the claimed receiving a login request from a user is met by the claimant or their attorney entering the website to login to the system (see: column 6, lines 66 to column 7, lines);

--the claimed electronically presenting a welcome screen to the user is met by the greeting (20, Fig. 2) given the user after accessing the system (see: column 8, lines 10-15);

--the claimed receiving a first user selection from the user is met after entry and confirmation of login (22, Fig. 2), the attorney follows the prompts and enters demands (23, Fig. 2) (see: column 8, lines 16-29);

--the claimed presenting a first user screen based on the first user selection is met after entry and confirmation of login (22, Fig. 2), the attorney follows the prompts and enters demands (23, Fig. 2) (see: column 8, lines 16-29);

--the claimed receiving user identification information from the user is met by the sponsor user enters the website to login to the system (see: column 6, lines 50-);

--the claimed presenting a second user screen based on the user identification information is met at step 11 after login, where the sponsor user is presented with a choices of adding/editing cases, viewing all cases for that sponsor, or logout (see: column 10, lines 31-45),

--the claimed receiving a second user selection from the user is met at 13 which is after step 12, where the sponsor user is presented with a participation agreement (see: column 11, line 3-11); and

--the claimed presenting a third user screen based on the second user selection, the third user screen for a new appeal screen is met at step 15 where the view cases screen reveals all the information for a given case (see: column 12, lines 17-21).

Burchetta et al. fails to teach the claimed appeal status information relates to request for reconsideration of a claim adjudicated by an insurer.

However, Burchetta et al. teaches a computerized system for automated dispute resolution through the Intranet or Internet where a dispute is a claim against another person or against whom another person has asserted a claim, whether the litigation is pending or not (see: column 4, lines 23-27). In addition, Burchetta et al. teaches that a defendant, or his or her insurer make a series of offers to settle a claim (see: column 1, lines 39-49). The Examiner considers a dispute that is not pending as a claim that has been adjudicated by the one of the parties involved such as the insurer. Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include an appeal that is a request for reconsideration of a claim adjudicated by an insurer with the computerized dispute resolution system and method as taught by Burchetta et al. with the motivation of providing accurate appeal information thereby allowing the opportunity for involved parties to successfully settle their claims easily, effectively and inexpensively.

As per claim 8, Burchetta et al. teaches a method for automating an appeal process, comprising:

--the claimed receiving appeal data descriptive of a plurality of appeals from a user remote station is met by receiving a plurality of demands and settlement offers from the involved parties via the Internet (see: column 19, lines 32-35). In addition, Burchetta et al. teaches that a defendant, or his or her insurer make a series of offers to settle a claim (see: column 1, lines 39-49). The Examiner considers the series of demands and offers as data descriptive of a plurality of insurance appeals;

--the claimed converting appeal data from one or more of the plurality of appeals to a determined appeal format is met by each claim being submitted electronically is formatted to be compatible with the system, for example a PC input fed to the central processing unit (see: column 9, lines 28-32);

--the claimed sending at least a portion of the converted appeal information to an appeals unit is met by the central processing unit that receives information corresponding to three settlement offers and a plaintiff or claimant enters three demands in a plurality of communication with the system (see: column 2, lines 3-6). In addition, Burchetta et al. teaches that each claim being submitted electronically is formatted to be compatible with the system, for example a PC input fed to the central processing unit (see: column 9, lines 28-32).

Burchetta et al. fails to teach the claimed appeal status information relates to request for reconsideration of a claim adjudicated by an insurer.

However, Burchetta et al. teaches a computerized system for automated dispute resolution through the Intranet or Internet where a dispute is a claim against another person or against whom another person has asserted a claim, whether the litigation is pending or not (see: column 4, lines 23-27). In addition, Burchetta et al. teaches that a defendant, or his or her insurer

make a series of offers to settle a claim (see: column 1, lines 39-49). The Examiner considers a dispute that is not pending as a claim that has been adjudicated by the one of the parties involved such as the insurer. Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include an appeal that is a request for reconsideration of a claim adjudicated by an insurer with the computerized dispute resolution system and method as taught by Burchetta et al. with the motivation of providing accurate appeal information thereby allowing the opportunity for involved parties to successfully settle their claims easily, effectively and inexpensively.

As per claims 13 and 14, Burchetta et al. teaches a method for an automated appeal process, comprising:

--the claimed collecting user information and appeal data from a data provider is met by the sponsor information screen that allow the sponsor to add/edit information stored in the database such as sponsor name, address, etc... (see: column 13, line 21-38);

--the claimed electronically storing the collected data in a database is met by the information which is entered is submitted to a central database via the Internet (see: column 9, lines 65-66);

--the claimed sending the appeal data to an appeal unit is met by the central processing unit that receives information corresponding to three settlement offers and a plaintiff or claimant enters three demands in a plurality of communication with the system (see: column 2, lines 3-6);

--the claimed receiving a status of an appeal from the appeals unit is met by the communication and processing of all demands and offers through the central processing unit (8, Fig. 1) (see: column 3, lines 64 to column 2, lines 5). In addition, Burchetta et al. teaches a

computer screen displaying current status of case with corresponding details to attorney (see: column 15, lines 23-31);

--the claimed storing the status of the appeal is met by the option of the system administrator to Add/Edit information from the database such as case status information (see: column 16, lines 65 to column 17, lines 50). In addition, Burchetta et al. teaches that the system calculates, stores and tabulates settlement data once a settlement has been reached (see: column 6, lines 7-10); and

--the claimed sending the status of the appeal to the data provider is met by the computer screen displaying current status of case with corresponding details to attorney (see: column 15, lines 23-31).

Burchetta et al. fails to explicitly teach:

--the claimed appeal status information relates to request for reconsideration of a previously adjudicated claim and claim adjudicated by an insurer.

However, Burchetta et al. teaches a computerized system for automated dispute resolution through the Intranet or Internet where a dispute is a claim against another person or against whom another person has asserted a claim, whether the litigation is pending or not (see: column 4, lines 23-27). In addition, Burchetta et al. teaches that a defendant, or his or her insurer make a series of offers to settle a claim (see: column 1, lines 39-49). The Examiner considers a dispute that is not pending as a claim that has been adjudicated. Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include an appeal that is a request for reconsideration of a claim adjudicated by an insurer with the computerized dispute resolution system and method as taught by Burchetta et al. with the

motivation of providing accurate appeal information thereby allowing the opportunity for involved parties to successfully settle their claims easily, effectively and inexpensively.

8. Claims 2 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,330,551 to Burchetta et al. in view of U.S. Patent No. 6,766,307 to Israel et al.

As per claim 2, Burchetta et al. teaches a method for an automated appeal process for a user, comprising:

--the claimed collecting user information and appeal data from the user is met by receiving a plurality of demands and settlement offers from the involved parties via the Internet (see: column 19, lines 32-35);

--the claimed electronically storing the collected data in a database is met by the information which is entered is submitted to a central database via the Internet (see: column 9, lines 65-66);

--the claimed storing the status of appeal is met by the option of the system administrator to Add/Edit information from the database such as case status information (see: column 16, lines 65 to column 17, lines 50). In addition, Burchetta et al. teaches that the system calculates, stores and tabulates settlement data once a settlement has been reached (see: column 6, lines 7-10); and

--the claimed sending the status of the appeal to the user is met by the computer screen displaying current status of case with corresponding details to attorney (see: column 15, lines 23-31).

Burchetta et al. fails to explicitly teach:

--the claimed sending the appeal data to an appeal agency;

--the claimed receiving a status of an appeal from the appeal agency; and

--the claimed appeal is a request for consideration of a claim adjudicated by an insurer.

However, Burchetta et al. teaches a computerized system for automated dispute resolution through the Intranet or Internet where a dispute is a claim against another person or against whom another person has asserted a claim, whether the litigation is pending or not (see: column 4, lines 23-27). In addition, Burchetta et al. teaches that a defendant, or his or her insurer make a series of offers to settle a claim (see: column 1, lines 39-49). The Examiner considers a dispute that is not pending as a claim that has been adjudicated by the one of the parties involved such as the insurer. Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include an appeal that is a request for reconsideration of a claim adjudicated by an insurer with the computerized dispute resolution system and method as taught by Burchetta et al. with the motivation of providing accurate appeal information thereby allowing the opportunity for involved parties to successfully settle their claims easily, effectively and inexpensively.

Israel et al. teaches a system and method for providing complete non-judicial dispute resolution management and operation where the involved parties may choose to have their dispute forwarded to a mediator or arbitrator via a network communication channel, such as wireless communication, the Internet or any suitable equivalent thereof (see: column 19, lines 1-18). In addition, Israel et al. teaches that the mediator or arbitrator reviews and the respective positions and issues a decision to both parties (see: column 19, lines 16-18).

Therefore, it would have been obvious to a person of ordinary skill in the art the time the invention was made to include sending the appeals information to a mediator or arbitrator as taught by Israel et al. within the computerized dispute resolution system as taught by Burchetta et

al. with the motivation of managing and compiling all information related to the disputes for seamless progression negotiations to mediation or arbitration (see: Israel et al.: column 29, lines 16-19).

As per claim 11, Burchetta et al. teaches a method for automating an appeal process, comprising:

--the claimed receiving appeal data descriptive of a plurality of appeals from a user remote station is met by receiving a plurality of demands and settlement offers from the involved parties via the Internet (see: column 19, lines 32-35). In addition, Burchetta et al. teaches that a defendant, or his or her insurer make a series of offers to settle a claim (see: column 1, lines 39-49). The Examiner considers the series of demands and offers as data descriptive of a plurality of insurance appeals;

--the claimed converting appeal data from one or more of the plurality of appeals to a predetermined appeal format is met by each claim being submitted electronically is formatted to be compatible with the system, for example a PC input fed to the central processing unit (see: column 9, lines 28-32); and

--the claimed applying one or more rules to select one or more of the plurality of appeals is met by that implementation of a JavaScript program that applies an algorithm (rules) to determine lowest amounts the case will settle for, or to submit the demand (see: column 15, lines 37-45).

Burchetta et al. fails to explicitly teach:

--the claimed sending data descriptive of one or more selected appeals to an appeal agency; and

--the claimed appeal status information relates to request for reconsideration of a claim adjudicated by an insurer.

However, Burchetta et al. teaches a computerized system for automated dispute resolution through the Intranet or Internet where a dispute is a claim against another person or against whom another person has asserted a claim, whether the litigation is pending or not (see: column 4, lines 23-27). In addition, Burchetta et al. teaches that a defendant, or his or her insurer make a series of offers to settle a claim (see: column 1, lines 39-49). The Examiner considers a dispute that is not pending as a claim that has been adjudicated by the one of the parties involved such as the insurer. Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include an appeal that is a request for reconsideration of a claim adjudicated by an insurer with the computerized dispute resolution system and method as taught by Burchetta et al. with the motivation of providing accurate appeal information thereby allowing the opportunity for involved parties to successfully settle their claims easily, effectively and inexpensively.

Israel et al. teaches a system and method for providing complete non-judicial dispute resolution management and operation where the involved parties may choose to have their dispute forwarded to a mediator or arbitrator via a network communication channel, such as wireless communication, the Internet or any suitable equivalent thereof (see: column 19, lines 1-18). In addition, Israel et al. teaches that the mediator or arbitrator reviews and the respective positions and issues a decision to both parties (see: column 19, lines 16-18).

Therefore, it would have been obvious to a person of ordinary skill in the art the time the invention was made to include sending the appeals information to a mediator or arbitrator as

taught by Israel et al. within the computerized dispute resolution system as taught by Burchetta et al. with the motivation of managing and compiling all information related to the disputes for seamless progression negotiations to mediation or arbitration (see: Israel et al.: column 29, lines 16-19).

As per claim 12, Burchetta et al. teaches a method for automating an appeal process, comprising:

--the claimed receiving appeal data descriptive of a plurality of appeals from a user remote station is met by receiving a plurality of demands and settlement offers from the involved parties via the Internet (see: column 19, lines 32-35). In addition, Burchetta et al. teaches that a defendant, or his or her insurer make a series of offers to settle a claim (see: column 1, lines 39-49). The Examiner considers the series of demands and offers as data descriptive of a plurality of insurance appeals;

--the claimed converting appeal data from one or more of the plurality of appeals to a predetermined appeal format is met by each claim being submitted electronically is formatted to be compatible with the system, for example a PC input fed to the central processing unit (see: column 9, lines 28-32); and

--the claimed applying one or more rules to select one or more of the plurality of appeals is met by that implementation of a JavaScript program that applies an algorithm (rules) to determine lowest amounts the case will settle for, or to submit the demand (see: column 15, lines 37-45).

Burchetta et al. fails to explicitly teach:

--the claimed sending data descriptive of one or more selected appeals to an appeal agency; and

--the claimed appeal status information relates to request for reconsideration of a previously adjudicated.

However, Burchetta et al. teaches a computerized system for automated dispute resolution through the Intranet or Internet where a dispute is a claim against another person or against whom another person has asserted a claim, whether the litigation is pending or not (see: column 4, lines 23-27). The Examiner considers a dispute that is not pending as a claim that has been adjudicated. Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include an appeal that is a request for reconsideration of a claim adjudicated by an insurer with the computerized dispute resolution system and method as taught by Burchetta et al. with the motivation of providing accurate appeal information thereby allowing the opportunity for involved parties to successfully settle their claims easily, effectively and inexpensively.

Israel et al. teaches a system and method for providing complete non-judicial dispute resolution management and operation where the involved parties may choose to have their dispute forwarded to a mediator or arbitrator via a network communication channel, such as wireless communication, the Internet or any suitable equivalent thereof (see: column 19, lines 1-18). In addition, Israel et al. teaches that the mediator or arbitrator reviews and the respective positions and issues a decision to both parties (see: column 19, lines 16-18).

Therefore, it would have been obvious to a person of ordinary skill in the art the time the invention was made to include sending the appeals information to a mediator or arbitrator as

taught by Israel et al. within the computerized dispute resolution system as taught by Burchetta et al. with the motivation of managing and compiling all information related to the disputes for seamless progression negotiations to mediation or arbitration (see: Israel et al.: column 29, lines 16-19).

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,330,551 to Burchetta et al. in view of U.S. Patent No. 4,858,121 to Barber et al.

As per claim 5, Burchetta et al. teaches that all information entered is submitted to central database via the Internet (see: column 9, lines 66-67).

Burchetta et al. fail to teach:

--the claimed presenting the user with a credit card information form; and
--the claimed collecting credit card information.

Barber et al. teaches medical payment system where during the credit card transaction an operator is walked through a series of questions and instructions complete the transaction (see: column 5, lines 21-36). The Examiner considers the questions to be located on a credit card information form.

One of ordinary skill in the art the time the invention was made would have found it obvious to include credit card transaction information as taught by Barber et al. within the computerized dispute resolution system and method as taught by Burchetta et al. with the motivation of decreasing the time delay between when a service is provided and the compensation for physician to lowering overhead (see: Barber et al.: column 1, lines 50-53).

10. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,330,551 to Burchetta et al. in view Official Notice.

As per claims 9 and 10, Burchetta et al. teaches that each claim being submitted electronically is formatted to be compatible with the system, for example a PC input fed to the central processing unit (see: column 9, lines 28-32).

Burchetta et al. fails to explicitly teach the claimed conversion further comprises converting the information to conform with a format described by a public law and public regulation.

The Examiner takes Official Notice that formatting appeal information according to public laws and regulations are old and well known in the art. For example, each state may have different laws and regulations that govern a settle amount insurance company's pay for an adjudicated claim. One of ordinary skill in the art at the time the invention was made would have found it obvious to include the adhering the public law and regulation with the computerized dispute resolution system and method as taught by Burchetta et al. with the motivation of applying state-by-state guidelines and standards to avoiding the commitment of fraud and abuse of payment for the settlement of a claim.

11. Claims 15-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,330,551 to Burchetta et al. in view of "Cardiff Software Announces TELEform MediClaim Module to PR Newswire hereinafter ("Newswire").

As per claim 15, Burchetta et al. teaches a method for an automated appeal process, comprising:

--the claimed receiving appeal data descriptive of a denial benefit, service or payment is met by the system communicating to each party the results of the comparison of the demands and

offers and results i.e. no settlement or settled at a certain amount (reads on “denial benefit”) (see: column 9, lines 50-52);

--the claimed storing the appeal data from the remote station in a database is met by the information which is entered is submitted to a central database via the Internet (see: column 9, lines 65-66); and

--the claimed sending the formatted appeal submission to an appeal agency, wherein the appeal relates to a request for reconsideration of a determination of entitlement to benefits or services is met by the central processing unit that receives information corresponding to three settlement offers and a plaintiff or claimant enters three demands in a plurality of communication with the system (see: column 2, lines 3-6).

Burchetta et al. fails to teach:

--the claimed associated the appeal data with one or more bases for an appeal; and
--the claimed automatically selecting a reason for an appeal of the denial, the selection being based upon the appeal data; and

--the claimed generating an appeal submission including the selected reason for an appeal and arrange and according to a predetermined format.

Newswire teaches the MediClaim module that reads and interprets handprint and machine print information from HCFA 1500 and UB-92 forms (see: paragraph 2). In addition, Newswire teaches that completed claims forms are scanned into the TELEform for processing and customized validations such as ICD-9, CPT are executed and the Export Manager performs the conversion from the table to the required output format (reads on “predetermining format”)

(see: paragraph 4-9 and 15). The Examiner interprets the validation step to include generating a reason for an appeal.

One of ordinary skill in the art at the time the invention was have found it obvious to include the MediClaim module using an Export Manager to format the appeal form as taught by the Newswire within the computerized dispute resolution system and method as taught by Burchetta et al. with the motivation of eliminating cost of manual data entry and automatically creating any standardized output required by the insurance providers and the Health Care Financing Administration (see: Newswire: paragraph 1).

As per claim 16, Burchetta et al. fails to explicitly teach the claimed wherein the selection of a reason for an appeal is based on results of previously submitted claim or appeal.

Newswire teaches that completed claims forms (reads on “previously submitted claim or appeal”) are scanned into the TELEform for processing and customized validations such as ICD-9, CPT are executed and the Export Manager performs the conversion from the table to the required output format (see: paragraph 4-9 and 15). The Examiner interprets the validation step to include selecting a reason for an appeal.

The obviousness of combining the teachings of Newswire within the Burchetta et al. reference are discussed in the rejection of claim 15, and incorporated herein.

As per claim 17, Burchetta et al. fails to explicitly teach the claimed wherein the appeal data comprises data descriptive of a plurality of insurance appeals.

Newswire teaches that completed claims forms are scanned into the TELEform for processing and customized validations such as ICD-9, CPT (reads on “data descriptive of a

plurality of insurance appeals") are executed and the Export Manager performs the conversion from the table to the required output format (see: paragraph 4-9 and 15).

The obviousness of combining the teachings of Newswire within the Burchetta et al. reference are discussed in the rejection of claim 15, and incorporated herein.

As per claims 18-20, Burchetta fails to teach extracting available data elements from a standardized data form, wherein the standardized data form is an HCFA 1500, NSF version 2.0 or 3.0 UB92, or ANSH data form is a HIPPA 835 or HIPAA 837 data form.

Newswire teaches that the Export Manager provides advance customization to all required data export formats, including NSF, UB-92 and 837 and performs the conversion from the table to the required output format (see: paragraph 4, 6 and 15).

The obviousness of combining the teachings of Newswire within the Burchetta et al. reference are discussed in the rejection of claim 15, and incorporated herein.

As per claim 21, Burchetta teaches a method for an automated appeal process, comprising:

--the claimed receiving appeal data from a remote station is met by the sponsor information screen that allow the sponsor to add/edit information stored in the database such as sponsor name, address, etc... (see: column 13, line 21-38);

--the claimed storing the appeal data from the remote station in a database is met by the information which is entered is submitted to a central database via the Internet (see: column 9, lines 65-66); and

--the claimed sending the formatted appeal submission to an appeal unit, wherein the appeal relates to a request for reconsideration of a determination of entitlement to benefits or

services is met by the central processing unit that receives information corresponding to three settlement offers and a plaintiff or claimant enters three demands in a plurality of communication with the system (see: column 2, lines 3-6).

Burchetta et al. fails to explicitly teach:

--the claimed processing the stored appeal data to identify a basis for an appeal; and
--the claimed generating an appeal submission comprising the identified basis for the appeal and according to a predetermined format.

Newswire teaches the MediClaim module that reads and interprets handprint and machine print information from HCFA 1500 and UB-92 forms (see: paragraph 2). In addition, Newswire teaches that completed claims forms are scanned into the TELEform for processing and customized validations (reads on "identify a basis for an appeal") such as ICD-9, CPT are executed and the Export Manager performs the conversion from the table to the required output format (reads on "predetermining format") (see: paragraph 4-9 and 15).

The obviousness of combining the teachings of Newswire within the Burchetta et al. reference are discussed in the rejection of claim 15, and incorporated herein.

As per claim 22, Burchetta et al. teaches a method for an automated appeal process, comprising:

--the claimed receiving appeal data relating to a denied appeal is met by the sponsor information screen that allow the sponsor to add/edit information stored in the database such as sponsor name, address, etc... (see: column 13, line 21-38);

--the claimed storing the at least one extracted reason in an appeal database is met by the information which is entered is submitted to a central database via the Internet (see: column 9, lines 65-66); and

--the claimed transmitting the generated appeal submission to the identified agency, wherein the appeal relates to a request for reconsideration of a determination of entitlement of a benefit, service, or payment.

Burchetta et al. fails to teach:

--the claimed extracting at least one reason from appeals data relating to as approved appeal;

--the claimed comparing the appeal data relating to a denied appeal to the at least one reason relating to an approved appeal stored in the appeal database;

--the claimed automatically selecting an appropriate reason for an appeal based upon the comparison;

--the claimed generating an appeal submission in a predetermined format and including the selected appropriate reason; and

--the claimed automatically identifying an appropriate appeals agency.

Newswire teaches the MediClaim module that reads and interprets handprint and machine print information from HCFA 1500 and UB-92 forms (see: paragraph 2). In addition, Newswire teaches that completed claims forms are scanned into the TELEform for processing and customized validations (reads on "identify a basis for an appeal") such as ICD-9, CPT are executed and the Export Manager performs the conversion from the table to the required output format (reads on "predetermining format") (see: paragraph 4-9 and 15). Furthermore, Newswire

teaches the TELEform Verifier automatically validates all ICD-9 and CPT codes as well as mis-marked or illegible entries are corrected and all fields required for export are checked for proper formatting and content (see: paragraph 13).

The obviousness of combining the teachings of Newswire within the Burchetta et al. reference are discussed in the rejection of claim 15, and incorporated herein.

12. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,330,551 to Burchetta et al. and "Cardiff Software Announces TELEform MediClaim Module to PR Newswire hereinafter ("Newswire") in view Official Notice.

As per claim 23, Burchetta et al. teaches a method for an automated appeal process, comprising:

--the claimed sending the formatted appeal submission to the identified regulatory agency, wherein the appeal relates to a request for reconsideration of a determination of entitlement to a benefit, service or payment is met by the central processing unit that receives information corresponding to three settlement offers and a plaintiff or claimant enters three demands in a plurality of communication with the system (see: column 2, lines 3-6).

receiving appeal data comprising:

--the claimed data descriptive of a denial of a benefit, service or payment is met by the sponsor information screen that allow the sponsor to add/edit information stored in the database such as sponsor name, address, etc... (see: column 13, line 21-38).

Burchetta et al. fails to teach:

--the claimed an identification of a state in which a health care service was provided; and

--the claimed identification of a type of health care insurance;
--the claimed automatically identifying a regulatory agency appropriate for an appeal, the identification being based upon the identified state and the type of health care insurance in the received appeal data; and
--the claimed generating an appeal submission comprising the data descriptive of the denial of the benefit, service or payment and arranged according to a predetermined format.

Newswire teaches the MediClaim module that reads and interprets handprint and machine print information from HCFA 1500 and UB-92 forms (see: paragraph 2). In addition, Newswire teaches that completed claims forms are scanned into the TELEform for processing and customized validations such as ICD-9, CPT are executed and the Export Manager performs the conversion from the table to the required output format (reads on “predetermining format”) (see: paragraph 4-9 and 15).

The obviousness of combining the teachings of Newswire within the Burchetta et al. reference are discussed in the rejection of claim 15, and incorporated herein.

Burchetta and Newswire fail to teach:

--the claimed an identification of a state in which a health care service was provided;
--the claimed identification of a type of health care insurance; and
--the claimed automatically identifying a regulatory agency appropriate for an appeal, the identification being based upon the identified state and the type of health care insurance in the received appeal data.

The Examiner takes Official Notice that in the medical industry state laws and regulations provide guidance to physician and patient in determine reimbursement amounts or

appeal information for health care insurance claims. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include identifying the state and the type of health care insurance regarding the appeal information with the system as taught by Burchetta et al. and Newswire with the motivation of providing accurate information to the insurance company thereby allowing prompt and immediate payment for an insurance claim.

(10) Response to Argument

In the Appeal Brief filed 13 July 2007, Appellant makes the following arguments:

(A) Claim 23 does not introduce new matter.

(B) Burchetta does not teach an appeal that relates to a request for reconsideration of a claim adjudicated by an insurer and there is no evidence in the record to support the assumption relied upon by the Examiner.

(C) Burchetta does not teach an appeal that relates to a request for reconsideration of a determination of entitlement to benefits or services and there is no evidence in the record to support the assumptions relied upon by the Examiner.

(D) Newswire does not teach selecting a reason for an appeal of a denial.

(E) The prior art fails to teach automatically identifying a regulatory agency.

Examiner will address Appellant's arguments in sequence as they appear in the brief.

Response to Argument (A):

In response to the first argument, the Examiner respectfully submits that objected to under 35 U.S.C. § 112, first paragraph to claim 23 has been withdrawn, however the 112, first paragraph objection to recitations of "extracting at least one reason from appeals data relating to as approved appeal" and "comparing the appeal data relating to a denied appeal to the at least

one reason relating to an approved appeal stored in the appeal database" within claim 22 has been maintained.

Response to Argument (B):

In response to the second argument, the Examiner respectfully submits the Burchetta reference teaches a computerized system for automated dispute resolution through the Intranet or Internet where a dispute is a claim against another person or against whom another person has asserted a claim, whether the litigation is pending or not (see: column 4, lines 23-27). Furthermore, common sense in the art suggests that an adjudicated claim is identified as a decision on claim made by the insurance company and Burchetta's automated dispute resolution handles the dispute of the claims after the insurance company has made a decision and then the defendant, or his or her insurer make a series of offers to settle a claim. The also Examiner considers litigation which is not pending as a claim that has been adjudicated by an insurer and the courts have held that even if a patient does not specifically disclose a particular element said element being within the knowledge of a skilled artisan, the patent taken in combination with that knowledge, would put the artisan in possession of the claimed invention. *In re Graves*, 36 USPQ 2d 1697 (Fed. Cir. 1995).

Response to Argument (C):

In response to the third argument, the Examiner respectfully submits that Burchetta teaches receiving a plurality of demands and settlement offers from the involved parties via the Internet (see: column 19, lines 32-35). In addition, Burchetta et al. teaches that a defendant, or his or her insurer make a series of offers to settle a claim (see: column 1, lines 39-49). The

Examiner interprets the series of demands and offers as requests for reconsideration of a determination of entitlement to benefits of services.

Response to Argument (D):

In response to the fourth argument, the Examiner respectfully submits that Newswire teaches the MediClaim module that reads and interprets handprint and machine print information from HCFA 1500 and UB-92 forms (see: paragraph 2). In addition, Newswire teaches that completed claims forms are scanned into the TELEform for processing and customized validations (reads on “identify a basis for an appeal”) such as ICD-9, CPT are executed and the Export Manager performs the conversion from the table to the required output format (reads on “predetermining format”). (see: paragraph 4-9 and 15). Furthermore, Newswire teaches the TELEform Verifier automatically validates all ICD-9 and CPT codes as well as mis-marked or illegible entries are corrected and all fields required for export are checked for proper formatting and content (see: paragraph 13). The Examiner interprets the validation step to include selecting or identifying a reason for an appeal of a denial.

Response to Argument (E):

In response to the fifth argument, the Examiner respectfully submits that the Burchetta and Newswire references are relied on for teaching a MediClaim module that reads and interprets handprint and machine print information from HCFA 1500 and UB-92 forms (see: Newswire: paragraph 2). In addition, Burchetta and Newswire teach that completed claims forms are scanned into the TELEform for processing and customized validations such as ICD-9, CPT are executed and the Export Manager performs the conversion from the table to the required output format (see: Newswire: paragraph 4-9 and 15). Furthermore, Burchetta and Newswire teach that

the Configuration Manager is a sophisticated customization tool that can be defined according to each state or insurance provider (see: Newswire: paragraph 11). Additionally, the Examiner directs Appellant's attention to U.S. Patent No. 6,766,307 to Israel et al. (cited herewith), which clearly evidences that a system and method for providing complete non-judicial dispute resolution management and operation where the involved parties may choose to have their dispute forwarded to a mediator or arbitrator via a network communication channel, such as wireless communication, the Internet or any suitable equivalent thereof. In addition, Israel et al. teaches that the mediator or arbitrator reviews and the respective positions and issues a decision to both parties as far back as May 11, 2000, which is prior to the filing of Appellant's present application (note especially col. 19, lines 1-18 and col. 19, lines 16-18). As such, the knowledge of automatically identifying a regulatory agency, in general, has clearly existed in the art prior to Appellant's claimed invention and the courts have held that even if a patent does not specifically disclose a particular element, said element being within the knowledge of a skilled artisan, the patent taken in combination with that knowledge, would put the artisan in possession of the claimed invention. *In re Graves*, 36 USPQ 2d 1697 (Fed. Cir. 1995).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one

of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/Robert Morgan/
Primary Examiner, Art Unit 3626

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

Conferees:


Luke Gilligan
Supervisory Patent Examiner
Tech Center 3600

Vincent Millin
Appeals Conference Specialist
Tech Center 3600



WYNN W. COGGINS
TECHNOLOGY CENTER DIRECTOR

